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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 42

WILLIE B. MOORE,

Petitioner,

vs.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITIONER'S BRIEF

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A. Official Report of Opinions Delivered in the Courts Below:

People v. *Moore*: 344 Mich. 137; 73 N.W. 2d 274.

OPINION OF LUCIEN F. SWEET, CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO, MICHIGAN, 9TH JUDICIAL CIRCUIT

Transcript of Record
Pages 81-84.

B. Grounds on Which the Jurisdiction of This Court Is Based

1. The final decree of the Supreme Court of Michigan, 344 Mich. 137; 73 N.W. 2d 274, was entered on December 1, 1955.

2. The order of the Supreme Court of the State of Michigan denying a Motion for Rehearing was entered on the first day of March, 1956.

3. Jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Sec. 1257, which provides in part:

> "Final judgments . . . rendered by the highest Court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> 1. . . .
>
> 2. . . .
>
> 3. By Writ of Certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under, the United States. June 25, 1948 c. 656, 62 Stat. 929"

4. Jurisdiction was assumed by this Court by Order allowing Writ of Certiorari, November 13, 1956.

C. Constitutional Provisions and Statutes Involved

Article XIV, Section 1, Constitution of the United States, which is involved in all 8 questions, provides:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

Questions One (1) and Two (2) also involve Section 64, Act 314, of the Public Acts of 1915, State of Michigan, M.S.A. 27.1044:

> "If the truth of the case be fairly stated in such exceptions, it shall be the duty of the judge holding such

court to sign such statement, and he may be compelled to do so by the court to which any writ of error may by law be brought, upon the judgment rendered in such cause, or which shall have authority to decide on such exceptions when returned by him. And in case of the death, resignation, expiration of the term of office, or vacancy in office from any other cause, of the judge before whom the cause was tried, when there shall be an official stenographer of such court who has taken full minutes of the testimony, exceptions and charges of the judge at such trial, such minutes shall be prima facie evidence of the testimony given, exceptions taken, and the charge of the court, and other proceedings on such trial, and such exceptions may be settled and signed by the successor in office of such judge, or by any judge authorized in such cases to perform the general duties of the judge of such court."

Question Three (3) also involves Section 12 of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.872:

"A police officer who has arrested a person without a warrant must, without unnecessary delay, take the person arrested before the most convenient magistrate of the county in which the crime was committed."

Question Four (4) also involves:

a. Section 1, Chapter III, of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.854:

"On the trial of every indictment or criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself."

b. Michigan Court Rules, State of Michigan, Rule 35 A, Sec. 1:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the court shall advise the accused that he is entitled . . . to have counsel."

Question Five (5) also involves:

a. Section 16, Chapter XV, of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.1253, which provides:

> "Whenever any person charged with having committed a felony or misdemeanor shall be unable to procure counsel and the presiding judge shall appoint some attorney to conduct the defense, the attorney shall . . ."

b. Michigan Court Rules, State of Michigan, Rule 35 A, Sec. 1:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the court shall advise the accused . . . that in case he is financially unable, if accused so desires, the court will, if accused so requests, appoint counsel for him."

The Sections of the Constitution of the State of Michigan (1908) involved are as follows:

a. Article II, Section 16,

> "No person shall . . . be deprived of life, liberty or property, without due process of law."

b. Article II, Section 19,

> "In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury . . .; to have the assistance of counsel for his

defense; and in courts of record, when the trial court shall order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal."

D. Questions Presented for Review

1. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Sec. 1 of the Constitution of the United States, in denying the Delayed Motion for New Trial of respondent in the Circuit Court for the County of Kalamazoo, Michigan, and affirming that denial in the Supreme Court of the State of Michigan, when the trial judge who accepted the plea of guilty originally, was deceased at the time of such hearing and there was no complete record, and no record kept of the arraignment?

2. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the Constitution of the United States in denying the Delayed Motion for New Trial of respondent in the Circuit Court for the County of Kalamazoo, Michigan, in affirming that denial in the Supreme Court of the State of Michigan, when the only evidence of an arraignment was the testimony of witnesses as to their recollection of the arraignment, such testimony having been taken 12 years later?

3. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the Constitution of the United States, in that the plea of guilty of respondent to the crime of murder, in the Circuit Court for the County of Kalamazoo, Michigan, was not freely and voluntarily made, but in fact was made by virtue of duress, coercion and fear?

4. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the

Constitution of the United States in that the trial court in the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of respondent, failed to inform respondent of his right to counsel and respondent did not competently and intelligently waive said right?

5. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of the respondent; failed to appoint counsel for said respondent and the respondent did not competently and intelligently waive said right?

6. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of the respondent, failed to inform respondent of his right to trial by jury, failed to grant him said right, and in sentencing him, effectively denied him his right to a public trial by an impartial jury, and he did not competently or intelligently waive the same?

7. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the alleged arraignment and sentence of the respondent, failed to inform the said respondent of the consequences of his plea of guilty and the said respondent was not of sufficient intelligence and understanding to comprehend the consequences thereof.

8. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the said Willie B. Moore was denied a combination of two or more of the aforesaid rights and, considering the background and experience of the aforesaid respondent, he was unable to competently and intelligently waive said rights?

E. Concise Statement of the Case

(Figures in parentheses refer to pages of printed record unless context clearly indicates otherwise.)

On the afternoon of October 26, 1938, Josie Zeedyke was murdered in Kalamazoo, Michigan (6-16, 81).

Respondent was arrested in the late afternoon of the same day (15, 40, 77, 81). He was questioned by numerous individuals including the Sheriff, Chief of Police, Prosecutor and Assistant Prosecutor for the City and County of Kalamazoo, Michigan, on into the night of the 26th and until approximately 2:00 o'clock A.M. on the 27th (52, 53, 57, 69-81). He was questioned from 8:00 o'clock A.M. to 10:00 or 11:00 o'clock P.M. on the 27th (78). He was again questioned from 8:00 o'clock A.M. to about noon on the 28th, and again was questioned on the afternoon of the 28th, whereupon he confessed and was taken before the Municipal Justice (78). He waived examination and was bound over on the 28th day of October, 1938 (41, 42, 81).

The Respondent testified that during the time of questioning the Prosecutor told him that if he cooperated he would get a shorter sentence (79). Respondent testified the Chief of Police of the City of Kalamazoo so informed him (79).

Testimony by the Respondent and by various officers of the Sheriff's department and the Prosecuting Attorney's

staff shows that there was high tension in the community (52-56, 61, 62, 72). Mr. Moore was informed of this tension, had access to the papers of the community, and was even warned by the Sheriff that perhaps he (the Sheriff) could not do anything to protect him (40-41, 48, 52-57, 79, 80). These newspapers were shown to Respondent (49). Threats of a plot were told to him (53, 79, 80). The Respondent was told that he was to be taken over a back road to prison, which was done (53, 56, 80).

Respondent testified that someone banged on the bars of his cell and there were remarks and threats which were audible to him in his cell from persons outside his cell, followed by hammering (48, 79). It was further testified that police officials threatened him (45, 79). People were brought to the cell to look in upon him (79). Respondent was pushed around in the Police Station (79). The cell was isolated (48).

On October 29, 1938, the Information was filed, Respondent was arraigned, pleaded guilty and was sentenced to Jackson Prison for life (4, 5, 6, 16, 17). Respondent states that he arrived in the court room at 7:00 o'clock in the morning of the 29th (42, 44, 45).

The Information, which was read to him on the 29th day of October, 1938, had endorsed upon it forty-three (43) witnesses (4, 5). There is no evidence that the Respondent was furnished with a copy of the Information (1). No record was made of the arraignment and plea (28-32). The sentencing judge remarked that he had had a private interview with the Respondent, that he assured Respondent that he should not plead guilty unless he was guilty, that he was not required to plead guilty, that he could have a trial by jury if he wished it (15). According to the statement of the trial judge, Respondent stated that he was guilty and wanted to get it over with, to get to an institution to be

examined, and to be under observation (16). The trial judge stated that Respondent insisted that there was something wrong with his head and that he had had queer sensations before (16). Further testimony by several witnesses indicates an unnatural calmness or nonchalance on the part of Respondent (68, 71, 72). One witness stated it was hard to understand his attitude (72).

On two separate hearings, November 20, 1950, and December 4, 1950, several witnesses were called by the prosecution to testify to their recollection of what had occurred in the court room that morning twelve years before (26-29, 32-35, 35-39). One witness was a casual observer, and the other was a son of the murdered lady (26, 35).

The testimony of the first witness, a casual observer, Reint Schuur, consisted in evidence that the Information was read, prosecutor asked Respondent how he pleaded, Respondent pleaded guilty (26-28, 32-35). Testimony further showed that according to this witness the judge told Respondent he could get a life sentence (33). According to the witness, Mr. Moore said he realized that (33). Witness further testified that something was said about a lawyer, Respondent stating he did not want one, he wanted to get it over with (33). Witness further stated he did not remember any mention of trial by jury (34).

John Zeedyk, son of the murdered lady, testified (35-39). It was he who was physically restrained from committing an assault upon Willie B. Moore back in 1938 after Mr. Moore had been arrested (49). This witness testified that Respondent was asked if he wished a lawyer (36). Respondent answered "no" (36, 37). He also testified that the judge informed Respondent he could be sentenced to life in prison and that the judge asked whether the confession was voluntary (38). He also remembered nothing about the trial by jury being mentioned (38).

The testimony of the Respondent indicates that the trial judge did not tell him that he had a right to counsel (80); that the consequences of his plea were not explained to him (41); that his plea was not voluntary (40, 45, 78, 79, 80); that no mention was made of jury trial (45); that the judge informed himself of the amount of schooling that the Respondent had (45); that Respondent just wanted to get out of this mess.

Willie B. Moore is a colored man and was seventeen (17) years of age at the time of his sentence (14, 18, 20, 45, 82). He had a seventh grade education (18). He was without the assistance of counsel for his defense, was without the aid or assistance of friends or relatives, during the entire period referred to above (32-39, 40-49, 55). The aid of friends and relatives and the counsel of an attorney was not afforded nor offered to him (40, 41, 47, 55, 79).

The sole criminal record of the Respondent was certain juvenile activities, which never have been specifically stated, and a conviction upon a plea of guilty for car theft (14, 15, 21-24, 82). In reference to the car theft, Detective Walter Coe testified to the fact that the Respondent had pleaded guilty in Grand Rapids (21-24). Respondent's father was the person with whom the detective dealt (21-24, 42-46). It was the impression of the Respondent that the action against him in Grand Rapids had been dismissed (42-43). The testimony indicated that the Respondent did not know that he had a right to get an attorney in the Grand Rapids matter (41); that Detective Coe did not tell him that he had the right to an attorney (41).

The Respondent did not know of his right to counsel (47). The Respondent did not know that murder carried life (49).

F. Summary of Argument

In the argument reference is made to the Original Record and the Supplemental Record. Original and Supplemental Records are defined as follows:

"Original Record." The proceedings and records of the Municipal Court and the Circuit Court, including returns from Municipal Court, complaint, warrant, information, order sentencing, as well as testimony determining sentence, as indicated by the file before the trial court on the making of the Delayed Motion for New Trial.

The "Supplemented Record." The Original Record plus the record of the three hearings on Respondent's Delayed Motion for New Trial.

There are certain facts and principles which are common to all of the issues considered. Rather than to repeat them each time, they are hereby called to the attention of the Court:

When Willie B. Moore was arraigned and sentenced, he was seventeen (17) years of age. He was a colored man and had been born in Arkansas, a member of a large family. He had a sixth grade education. His criminal experience was limited to certain juvenile acts which have not been shown and which have been but generally and vaguely referred to. His record consisted of a conviction in Grand Rapids, Michigan, for car theft. The testimony of a Grand Rapids officer, Walter Coe, does not indicate that this previous conviction in any way educated the Respondent as to his constitutional rights. In fact, the Respondent had thought the charge had been dismissed. The Grand Rapids police had dealt with the Respondent primarily through one of his parents.

It is important to note that the sentencing Court quotes Respondent as saying: " * * * there is something wrong with my head" " * * * that he had had something akin to queer sensations before this." The sentencing court indicated that the Respondent said he wanted to go to an institution and be under observation and be examined (Transcript of record, 15, 16).

Respondent was without the aid of counsel from the time he was arrested on a Wednesday afternoon until the time he was sentenced on the following Saturday morning. He was examined often by many people for long hours. He was without the advice and assistance of friends or relatives.

In *Powell* v. *Alabama,* 287 U.S. 45; 53 S.Ct. 55; 77 L.Ed. 158; the Defendants were young, ignorant, illiterate and were without the benefit of friends or counsel. Such a background had this Respondent, and the United States Supreme Court held that such a background must be considered in reference to due process.

Of a similar background is *DeMeerleer* v. *Michigan,* 329 U.S. 663; 67 S.Ct. 596; 91 L.Ed. 584; where Rene DeMeerleer was young, inexperienced, and was hurried through unfamiliar court proceedings, and the United States Supreme Court reversed the trial court.

In *Fikes* v. *State of Alabama,* —— U.S. ——; 77 S.Ct. 281; —— L.Ed. ——; the Respondent was an uneducated negro, of low mentality, who was afforded more consideration by the Alabama authorities than Willie B. Moore was by Michigan authorities. The Court held that the education, mentality, and experience of the youth were important factors in determining whether due process was granted.

In *Herman* v. *Claudy,* 349 U.S. 904; —— S.Ct. ——, —— L.Ed. ——; Respondent pleaded guilty to numerous

charges and filed habeas corpus, some eight years later. This Honorable Court considered the youth and inexperience of Stephen J. Herman, the possible mental coercion, the failure to appoint counsel and reversed and remanded the cause.

The Michigan Supreme Court has not failed to recognize the duty of a trial court to be extremely chary in protecting the constitutional rights of young, illiterate persons standing before them.

In *People* v. *Utter,* 209 Mich. 214, at pages 223 and 224, 176 N.W. 424, the court considered the limited intelligence of the Respondent and his ignorance of legal proceedings and granted a new trial. In *People* v. *Merhige,* 212 Mich. 601, 180 N.W. 418 this court reversed the judgment and sentence in the case of a Syrian man twenty-seven (27) years of age.

See the dissenting opinion of Mr. Justice Bushnell, *People* v. *Crandall,* 270 Mich. 124, at 130; 258 N.W. 224.

See also *People* v. *Coates,* 337 Mich. 56; 59 N.W. 2d 83, at 93; where, although the appeal was denied, this Honorable Court said: "We are not aware of any unusual circumstances which indicated a duty on the part of the court to appoint counsel for Defendant." In that particular Defendant was twenty-five (25) years of age, experienced in crime, waived examination before the examining magistrate, and expressed a desire to plead guilty and get it over with. See also the dissenting opinion of Mr. Justice Bushnell.

See also *People* v. *Mahler,* 329 Mich. 155; 45 N.W. 2d 14, where, although the court held that the record leaves no doubt that the Defendant's plea of guilty was freely, voluntarily and understandingly entered, it notes that he was at that time twenty-seven (27) years of age, had served in the Armed Forces, and there was nothing to indicate that his mentality and understanding were other than normal.

See also A.L.R. 2d 1074.

This crime aroused a community. The facts and nature thereof indicate that the matter called for careful examination. The possible sentence was one of life. Nothing appears herein to indicate that the trial court applied that cool, careful deliberation and serious consideration for this young colored man which was called for.

Although the apparent guilt or innocence of the Respondent should not be considered by the Court, the Respondent steadfastly denies responsibility for the crime. As Mr. Justice Frankfurter pointed out in his dissenting opinion in *Sacher* v. *United States*, 343 U.S. 128; 73 S.Ct. 451, 464; 96 L.Ed. 717:

> "Time out of mind this Court has reversed convictions for the most heinous offenses, even though no doubt about the guilt of the Defendant was entertained. It reversed because the mode by which guilt was established, disregarded those standards of procedure which are so precious and so important to our society."

1. In this cause no record was kept by a court reporter of the arraignment and plea.

Without a record of the arraignment it is impossible for the Respondent to have an impartial review of his cause, to determine whether due process was ever granted to him.

2. The only evidence of the arraignment is a reference that states: "(Respondent arraigned and pleaded guilty)." To remedy that defect the People were permitted to introduce the testimony of witnesses as to their recollection of the arraignment, such testimony being taken 12 years after said arraignment. Such testimony should not have been admitted to establish that Respondent's constitutional rights were granted to him.

3. The plea of guilty was not freely and voluntarily but was made because of the threats made to Respondent, the banging on the bars of the cell, the long and intensive questioning by many officials, the statements by the Sheriff that perhaps he had better plead since he was not certain he could protect Respondent, the statements concerning plots to waylay the Sheriff and the aggregation of other facts heretofore and hereafter set out.

4. The trial court erred in that it failed to inform Respondent of his right to counsel and he did not competently and intelligently waive his said right.

5. There is some evidence in the Supplemented Record that something was said about a lawyer. It is contended that the youth and inexperience of Respondent coupled with the many circumstances which caused him to plead demanded that he be informed very carefully and clearly of his right to counsel and that without counsel he could not be accorded his Constitutional Rights.

6. As indicated in Paragraph 4, counsel should have been appointed for the Respondent. His limited intelligence, youth and inexperience indicate that, under the circumstances he did not intelligently and competently waive that right.

7. The record shows that the trial court erred in failing to inform Respondent, prior to arraignment and plea, of his right to a trial by jury, and, in sentencing him effectively denied him his right to a public trial by an impartial jury and he did not competently and intelligently waive same.

8. The Original Record fails to show that Respondent was informed of or understood the consequences of his plea. In fact it shows that the Respondent had something wrong with his head and wanted to get to an institution for exam-

ination. The Original Record and the Supplemented Record show that Respondent was no experienced criminal who understood the criminal law and who could understand the consequences of "life."

9. Though each error above noted or each fact separately considered may not of itself constitute a deprivation of due process, there are at least twenty-four facts or factors which considered in the aggregate prove that due process was not granted to the Respondent.

G. ARGUMENT

1. The Respondent Is Entitled to a New Trial in This Case. The Trial Judge Is Deceased and the Record and Testimony on Arraignment Is Missing, All Without Fault of the Respondent. There Is No Evidence of an Arraignment and There Can Be No Means for Respondent to Adequately Appeal.

The trial judge, George V. Weimer, was deceased on the filing of the delayed motion for new trial. No stenographic record was kept of the arraignment.

The Statutes of the State of Michigan, being Section 64, Act 314 of the Public Acts of 1915, M.S.A. 27.1044, provide that in case of the death of the trial judge, the successor in office may certify the Bill of Exceptions. This certification is conditioned upon the existence of an official stenographer who has taken full minutes of the testimony, exceptions and charges of the judge.

The Respondent should not be permitted to take advantage of the death of the judge when he could, by timely action, have had a proper certification. However, the Respondent was not able to effect the proper papers and proceedings for a new trial until 1950. The delay should not weigh against the Respondent.

The failure to have a record on arraignment was not the fault of the Respondent. Such failure prejudiced his rights on filing his Delayed Motion and also on appeal. Such failure deprives Respondent of a complete record.

Counsel has failed to find a case where there were no stenographic notes taken at all. However, loss of stenographic notes, death of the stenographer with later inability to transcribe, and other cases in which a record or a part of the record of the trial was not available to the moving party, are similar situations.

In *White Pine Lumber Company* v. *Manufacturers Lumber Company,* 191 Mich. 390; 158 N.W. 124, a certified transcript of the evidence taken in shorthand was used to prepare the Record on Appeal, though the stenographer had died after the trial. In that case another stenographer was able to transcribe the record. It is apparent that if no one could have transcribed the notes, defendant would have been entitled to a new trial.

If the power exists in the Appellate Court to grant a new trial for inability to perfect the record in civil cases then it should exist in criminal cases.

In *Little* v. *The State,* 131 Texas Criminal 164; 97 S.W. 2d 479, the offense was murder, the punishment death. The Supreme Court of Texas ruled that the inability to obtain a transcript due to the death of the reporter was sufficient basis to reverse the judgment against Respondent and remand the case to the lower court. See *City of Duncan* v. *Abrams,* 171 Okla. 619; 43 P. 2d 720.

Although this Honorable Court has often said that the right of appeal is not essential to due process of law under Article XIV, Section 1, of the Constitution of the United States, *Reetz* v. *Michigan,* 23 S.Ct. 390; 188 U.S. 508; 47 L.Ed. 563, it has also determined that the right is not

essential to due process provided due process has already been accorded in the tribunal of first instance. *State of Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 50 S.Ct. 228; 281 U.S. 74; 74 L.Ed. 710 and the cases cited therein.

The absence of a record on arraignment and plea has completely denied and deprived the Circuit Court, the Supreme Court of Michigan and this Honorable Court of any means of determining whether due process was or was not afforded Respondent in the Court of first instance. In the absence of that opportunity to determine whether due process was afforded and, in the light of the factual background of this case, the youth, illiteracy, inexperience, and immaturity of Respondent, the threats and tension displayed, it cannot be presumed that due process was granted to the Respondent.

A Respondent should be given a right of cool review of his conviction by a purely judicial tribunal, far enough removed from the scene of the trial to be uninfluenced by local prejudice. 13 A.L.R. 99 at page 107. This is true whether the Respondent is tried by a jury or a judge or pleads guilty. In the present case feeling was high at the time of the plea. Now at this late date the local court cannot be entirely free of the influence and feeling of the community. Even in 1955 when the Michigan Supreme Court decided this case the court could not restrain itself from quoting the original judge's remarks: "This, without question, is the most pronounced case of sadism in the criminal annals of this country."

Article II, Section 19 of the Constitution of the State of Michigan provides that reasonable assistance shall be given to prosecute an appeal. Yet in this case there can be no adequate appeal and therefore there can be no cool review of Respondent's conviction.

2. Testimony of Witnesses as to Their Recollection of the Arraignment of the Respondent, Such Testimony Being Taken Twelve Years After the Said Arraignment, Is Not Admissible.

The Original Record was the only proper record to be considered by the trial court in hearing Respondent's Delayed Motion for a new trial.

The Circuit Court for the County of Kalamazoo, Michigan, permitted the People of the State of Michigan to substitute a make-shift record for the original record on arraignment, which original record had never existed due to an omission by that tribunal at the time of Respondent's plea.

The majority of the Supreme Court of Michigan, in this cause completely overlooked the omission of the trial court and considered the substituted testimony.

The benefits of a record and the evils that arise by introducing evidence *aliunde* are evident. Satisfactory secondary evidence may be introduced to supply evidence of original documents and proceedings which are lost. But secondary evidence substituted for a non-existent record based upon the memory of witnesses of an occurrence twelve years old. should not be allowed. Such evidence could not be properly admitted to prove what statements had been made and what things had been done on the arraignment of the Respondent.

If this evidence is not competent, the Michigan Supreme Court will not presume that all necessary steps have been taken. See *Simon Grigg* v. *The People*, 31 Mich. 471, where the case was silent as to whether an arraignment was had or a plea made.

See *Edwards* v. *The People*, 39 Mich. 760, where the Court held that an absence from the record of a recital of

an investigation by the judge in that case avoided a sentence on plea of guilty.

See also *People* v. *Walter Lepper*, 51 Mich. 196, 16 N.W. 377, where the Court said it would have been more satisfactory if the record furnished more of the particulars of the investigation made by the Circuit Judge before pronouncing sentence. Unlike the case in question, the Court therein held that there appeared to be no undue haste in the matter.

3. The Plea of Guilty of the Respondent Was Not Freely and Voluntarily Made, But in Fact Was Made by Virtue of Duress, Coercion and Fear.

It needs no citation of authority that a coerced plea accepted by the Court, with sentence thereon, deprives the individual of due process of law.

Art. II, Sec. 16 of the Constitution of the State of Michigan (1908), provides:

> "that no person shall * * * be deprived of life, liberty, or property, without due process of law."

The Constitution of the United States, Art. XIV, Sec. 1, provides:

> "Nor shall any state deprive any person of life, liberty, or property without due process of law."

According to the Original Record the Respondent was arrested without warrant on October 26, 1938, a Wednesday afternoon. Thereafter he was without aid of counsel and there is no evidence that counsel was offered to him. He was taken before an examining magistrate on the 28th day of October, 1938 in the afternoon. There is no indication why there was such a prolonged delay between the arrest and the hearing before the magistrate.

The Statutes of the State of Michigan, Sec. 12 of Act 175 of the Public Acts, 1927, M.S.A. 28.872, provide:

> "A peace officer who has arrested a person without a warrant must, without unnecessary delay, take the person arrested before the most convenient magistrate of the county in which the crime was committed."

The trial court in sentencing the Respondent states that an investigation was made. This order is conclusive that an investigation was made. However, the Supreme Court of Michigan itself has held that acceptance of plea and sentence thereupon will be avoided if enough appears in the record to convince the court that the Respondent was a man of limited intelligence, ignorant of legal proceedings and that proper care was not accorded. *People* v. *Utter, supra; People* v. *Merhige, supra.*

Considering then the Original Record alone, there can be no presumption that the plea of guilty was freely and voluntarily made. On the contrary, the record shows the delay in the hearing, the background of the Respondent, the nature and acts of the Respondent upon which a voluntary plea cannot be predicated.

If this Honorable Court consider the Supplemented Record, it appears all the more clearly that the plea was not freely and voluntarily made.

It is not denied that questioning began immediately upon the arrest of Respondent. Nor is it denied that he was subjected to continuous questioning until early in the morning of the following day and was further questioned at great length the second day and again the day after that, until finally he confessed. (Transcript of Record, 52, 53, 57, 69-81.) During this prolonged questioning he was without counsel. (Transcript of Record, 32-39, nowhere in Transcript does counsel appear at the time of sentence.)

Respondent did not contact, and was not permitted to contact, his parents or relatives during the period of questioning from October 26, 1938, until just before he was sent to prison on the 29th after everything was over. (Transcript of Record, 55, 79, 40, 47.) At the time of his arraignment and sentence he was afforded no opportunity and did not in fact contact his family or relatives although he requested that they be contacted. He was finally permitted to see his folks for about one half hour after he was sentenced. (Transcript of Record, 47.) His very failure to demand counsel and demand that his folks be contacted and that he be permitted to talk with them indicates his fear and inexperience.

The Respondent was kept in solitary confinement during the time of his retention in jail. (Transcript of Record, 48.) People banged on the bars of his cell. (Transcript of Record, 79.) The then Sheriff admitted telling Respondent that tension was very high, saying it was his duty to protect the Respondent, but stating that he could not do so perhaps if trouble started. (Transcript of Record, 40-41, 48, 52-57, 79, 80.) He was told he would get a shorter sentence if he cooperated. (Transcript of Record, 79.) Respondent had access to and was shown the local papers which were aroused by the crime. He was told that there was a plot to get him. (Transcript of Record, 53, 56, 79, 80.)

The testimony indicates that Respondent was not only questioned for long hours but was questioned by many different men and officers, including the Sheriff, Chief of Police, Prosecutor, Assistant Prosecutor, members of sheriff's department and others. (Transcript of Record, 52-56, 61, 62, 72.) He was questioned till late in the evening of the day of arrest and on into the early morning of the next day. He was questioned all the next day until late at night. He was questioned all the morning of the third day. Belatedly he was brought before an examining magis-

trate. (Transcript of Record, 78.) Yet the record nowhere discloses that any special care was given to this boy nor does the record disclose that any rights were accorded the boy or that they were carefully explained to him or that he intelligently and comprehendingly waived them.

A factor which should not be forgotten is the fact that this was a horrible crime that shocked a community and although extreme care and caution should have been exercised to bring the guilty person to task, there arose a reciprocal duty to be very wary of wronging an innocent person. It is submitted that this reciprocal duty was not exercised.

In *McNabb et al.* v. *United States*, 318 U.S. 332, 63 S.Ct. 608; 87 L.Ed. 819, the Respondent was held to have been deprived of due process when he was questioned for several days without being permitted to contact his relatives; without the aid of an attorney, and without being brought before an examining magistrate as soon as possible. Failure to accord Respondent an expeditious hearing violated the due process clause of the Fifth Amendment of the Constitution, according to this Honorable Court.

Although the *McNabb* case and the cases which follow it concern the Fifth Amendment, the same or similar basic rights are sought to be protected under the Fourteenth Amendment. These principles were applied in *Fikes* v. *Alabama*, —— U.S. ——, 77 S.Ct. 281, —— L.Ed. ——. In that case an uneducated negro of low mentality was taken to prison for questioning on a capital charge. He was questioned from Sunday until Thursday and then confessed and was then questioned again. Taking into consideration the youth and mentality of the Respondent along with the long questioning and other facts similar to our present case, this Honorable Court held that confessions so obtained and used violated the right of Fikes to due process.

under the Fourteenth Amendment of the Constitution of the United States and reversed the conviction and remanded the case to the lower court.

Under the circumstances of the present case, to wit: arrest without warrant, promises of leniency, low mentality of the Respondent, banging on the bars, statements of plots, fears of the Sheriff told to Respondent that he could not protect him, and all other facts the plea of guilty was not freely and voluntarily made, but in fact was made by virtue of duress, coercion and fear.

As Willie B. Moore said (transcript of record, p. 44):

> "After the man tell me he couldn't protect me than there wasn't nothing I could do. I was mostly scared than anything else."

4. Court Erred in That It Failed to Inform the Respondent of His Right to Counsel and Respondent Did Not Competently and Intelligently Waive His Said Right.

Article II, Section 19, of the Constitution of the State of Michigan (1908) provides:

> "In every criminal prosecution the accused shall have the right . . . to have the assistance of counsel for his defense."

Section 1, Chapter III of Act 175 of the Public Acts, 1927, M.S.A. 28.854 provides:

> "On the trial of every indictment or criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself."

Michigan Court Rules of the State of Michigan, Rule 35 A, Section 1, provides:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the Court

shall advise the accused that he is entitled . . . to have counsel."

Rule 35 A was adopted June 4, 1947. It was not in existence at the time of the sentence of this Respondent. Yet this rule merely recognized the existing constitutional rights of the Respondent, whether written or not. *DeMeerleer* v. *Michigan, supra.* There could have been no intelligent and competent waiver thereof.

"To justify acceptance of a plea without counsel, there must not only be an offer of the constitutional rights by the Court, but there must also be a waiver thereof, understandingly made."

Uveges v. *Pennsylvania*, 335 U.S. 427; 69 S.Ct. 184, 93 L.Ed. 127.

The Original Record is void of any reference to counsel. There was no offer. There could be no waiver. If the offer is presumed, the facts negative a presumption of competent waiver.

The Supplemented Record presents evidence which is at the most, insufficient to satisfy a man's constitutional guarantee. Witness Schuur said (transcript of record, 33):

"I don't know whether the judge asked him if he had a lawyer, or whether he wanted a lawyer, but there was some conversation about a lawyer."

Mr. Zeedyk, whom the Court must remember was the son of the deceased person, said (transcript of record, 38):

"All I know is that he did not have counsel, nor did he desire counsel."

This conclusion of the witness is the testimony of a man who was only restrained with great effort by others from

attacking the Respondent. The desire, although honest, to see Respondent punished, could not help but prejudice this witness, who assumed the Respondent was guilty of the crime. Such prejudice could not help but color his testimony.

The testimony of Detective Walter Coe, a Grand Rapids police officer, is the only testimony as to Respondent's criminal experience. It failed to indicate that this boy's experience informed him of his right to counsel. Any negotiations in reference to the car theft sentence in Grand Rapids were carried on between either the father or mother of the Respondent and Mr. Coe. The record indicated that Mr. Coe himself was mistaken about the person with whom he dealt. (Transcript of Record, 21-26.)

In *Commonwealth of Pennsylvania, ex rel. Stephen J. Herman, Petitioner* v. *Dr. John W. Claudy, Warden,* 350 U.S. 116; 76 S.Ct. 223; the defendant was twenty-one years of age when charged with thirty offenses and he pleaded guilty without benefit of counsel. This occurred in a state court. Petitioner's experience was somewhat similar to that of Willie B. Moore's. He had previously pleaded guilty to a charge of burglary, larceny and forgery, and was sentenced to six to twelve months in jail, again without benefit of counsel. Was held incommunicado for three days. He said he was guilty and said "I throw myself upon the mercy of the court." 350 U.S. at 121; 76 S.Ct. at 226.

This Honorable Court reversed the judgment and remanded the case.

In addition to the facts pointed out above, Willie B. Moore stated that there was something wrong with his head and that he had had queer sensations before (transcript of record, p. 16). He told the judge he wanted to get to an institution to be examined and be under observation

(transcript of record, p. 15). There was evidence of an unnatural calmness or nonchalance about the Respondent (transcript of record, pp. 68, 72).

The crime charged was serious. The charge was complicated. No information was furnished Respondent. The facts do not show a tender of the right to counsel and the facts do not show an intelligent, competent waiver thereof.

5. The Trial Court Failed to Appoint Counsel for Respondent, and He Did Not Competently or Intelligently Waive Said Right.

Section 16, Chapter XV of Act 175 of the Public Acts 1927, M.S.A. 28.1253 provides:

> "Whenever any person charged with having committed a felony or misdemeanor shall be unable to procure counsel, and the presiding judge shall appoint some attorney to conduct the defense, the attorney shall . . ."

The Court Rules of the State of Michigan, Rule 35 A, Section 1, provides:

> "If the accused is not represented by counsel upon arraignment before he is required to plead, the Court shall advise the accused . . . that in case he is financially unable, if accused so desires, the Court will, if accused so requests, appoint counsel for him."

The Original Record fails to indicate any notice to Respondent that he was entitled to have counsel appointed for him, although the probable sentence was life imprisonment if the plea was accepted.

The Supplemented Record refers to the matter of a lawyer as indicated in paragraph 4 hereof. Mere reference to counsel, if any, was meaningless. No offer of coun-

sel was made. The Respondent did not understand that counsel could be appointed for him if he so requested.

In *Uveges* v. *Pennsylvania, supra,* a youth seventeen years of age pleaded guilty to four indictments for burglary. That case arose under the Fourteenth Amendment. This Honorable Court held that counsel should have been appointed. The Court was divided as to when counsel should be offered, some members believing counsel should be furnished where serious offenses are charged, others believing that in non-capital cases, each case depends on its facts. Consider if you will, the facts enumerated by the court: 335 U.S. at Page 441; 69 S.Ct. 186 " . . . age and education of defendant, conduct of the court or the prosecuting attorney, and the complicated nature of the offense charged and the possible defense thereto . . . "

See also *Palko* v. *Connecticut,* 302 U.S. 319; 58 S.Ct. 149; 82 L.Ed. 288.

In the case of Willie B. Moore, the crime was serious. There were many facts besides the youth, inexperience and lack of education of the boy which necessitated appointment of counsel. It may be said that the charge was simple: "Murder." However, a mere glance at Michigan Criminal Law and Procedure, Second Edition, Glenn C. Gillespie, pages 1969 through 2001 shows 31 pages dealing with murder in particular and from pages 2039 through 2055, some 16 pages on defenses. Probably there is nothing in criminal law more complicated than murder and its defense.

In *Johnson* v. *Zerbst,* 304 U.S. 458; 58 S.Ct. 1019; 82 L.Ed. 1461, this Honorable Court has expressed the following thought:

> "It (the Sixth Amendment) embodies the realistic recognition of the obvious truth that the average defendant does not have sufficient professional legal skill to

protect himself when brought before a tribunal with power to take his life or liberty."

304 U.S. at 462;
58 S.Ct. at 1022;
82 L.Ed. at 1461.

Murder is no less complicated and counsel is no less needed under the Fourteenth Amendment.

If this Honorable Court shall hold that the right is presumed to have been offered, such a right was not waived. Respondent was uneducated, illiterate, ignorant of the intricacies of law, and totally unaware of the fundamental elements of fair trial guaranteed by the Constitution.

Johnson v. *Zerbst, supra;* although a case decided under the Sixth Amendment is similar to the case at bar. In that case the Court pointed out that the Petitioners were of little education and without funds. They had neither friends, relatives nor acquaintances to aid them. The Court says:

"Courts indulge every reasonable presumption against waiver of rights; . . . We do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

The *Johnson* v. *Zerbst* case is a reflection of a trend in the law which is recognized in Michigan cases and the Michigan Court Rules, *supra.* See 3 A.L.R. 2d 1074, which cites *In Re Elliott,* 315 Mich. 662; 24 N.W. 2d 528; and

People v. *Quicksall*, 322 Mich. 351; 33 N.W. 2d 904; both of which, although ruling there was a competent waiver therein, imply that such waiver therein, should be limited to adults of at least ordinary intelligence and experience.

In view of the above, there can be no doubt that failure to provide Respondent with counsel constituted an unlawful abridgement of his constitutional rights vitiating his conviction and resultant sentence.

6. The Trial Court Erred in Failing to Inform the Respondent of His Right to a Trial by Jury, and in Sentencing Him the Court Effectively Denied Him His Right to a Public Trial by an Impartial Jury, and He Did Not Competently or Intelligently Waive the Same.

Article II, Section 19, of the Constitution of the State of Michigan (1908) states:

> "In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury."

The Constitution of the United States, Article IV, Section 1, provides:

> "No state shall deprive any person of life, liberty or property without due process of law."

It needs no citation of law that due process includes the right to a trial by a jury.

The Original Record indicates an offer of a trial by jury in the statement of the judge in determining degree. However, there is no evidence of a competent waiver thereof.

Nothing in the supplemented record shows that trial by jury was offered by the judge. Nothing in the entire case

indicates Respondent was able to comprehend the significance of such an offer. Alone, caught up in this complicated mess, with threats of violence in his ears and in a court room occupied by hostile people, it is questionable whether an offer of a trial by jury would have any meaning.

7. The Trial Judge Failed to Inform the Respondent of the Consequences of His Plea of Guilty, and the Respondent Was Not Sufficiently Intelligent and Experienced to Understand the Consequences at the Time of His Plea.

Article II, Section 19 of the Constitution of the State of Michigan (1908) *supra*, and the Fourteenth Amendment to the Constitution of the United States, *supra*, both provide for due process, *supra*.

Due process includes the right to be advised of the consequences of a plea of guilty and correlative therewith the person shall be able to understand the consequences thereof. *DeMeerleer* v. *Michigan*, *supra*.

The Original Record indicates the youth and inexperience of the Respondent. The record further indicates that the Respondent insisted there was something wrong with his head and that he had queer sensations before this. His one desire was to have it all over, to get to an institution to which he was to be committed, and under observation and to be examined.

The Original Record fails to show the consequences of the plea were told to the Respondent. He was charged with a serious charge, couched in complicated language, with no counsel and without having the benefit of the Information or the witnesses endorsed thereon.

It should not be presumed that the consequences were told to him. If such is presumed, it cannot be presumed

that he understood them and therefore pleaded with full knowledge thereof under the facts set out.

Although the Supplemented Record indicates that at the time of the hearings in 1950, the Respondent had an understanding of the consequences of his plea and had materially matured, there is nothing in the records to show that at the time of the sentencing the Respondent knew what the consequences were. That he was inexperienced and a confused individual was indicated by the fact that he thought that the action against him in Grand Rapids had been dismissed. Further he stated that he wanted to get to the institution to which he was being committed and be examined. This leads one to the conclusion that he, if he had an opinion as to where he was to go, thought it would be to some mental institution, for he had stated he had queer sensations in his head. Both witnesses, Schuur and Zeedyk, testified that the life sentence was mentioned. Notwithstanding casual reference thereto, the immaturity and inexperience of Respondent and other facts heretofore set out do not indicate an ability to comprehend the consequences.

8. The Trial Court Deprived Respondent of His Right to Orderly, Due Process of Law.

Though this Honorable Court may find from considering the aforesaid questions individually that no single fact or factor constitutes a denial of due process, yet a consideration of the "totality of the circumstances" does show such a denial.

What facts and factors constitute the *People* v. *Moore*? (Pages refer to transcript.)

a. The horrible nature of crime (5-16).

b. The seriousness of crime.

c. The youth of Respondent (14).

d. The lack of education of the Respondent (14).

e. The lack of experience of Respondent (14, 15, 21-24, 82).

f. The long hours of intensive questioning by numerous officers (52, 53, 57, 69-81).

g. The lack of counsel (32-39, 40-49, 55 plus entire record).

h. The incarceration in isolated cell (48).

i. The pounding on cell doors, threats, shouting (48, 79).

j. The failure to inform Respondent of his right to counsel (32-39, 40-49, 55).

k. The notice to Respondent that threats had been made, plots laid, and tension in community (48, 52-56, 61, 62, 72).

l. The statements by sheriff that he was not certain he could protect Respondent (52-57, 79, 80).

m. The absence of opportunity to talk with Father or Mother, and denial of Respondent's request (40-49, 55).

n. The statements of mental condition and desire to be sent to an institution for examination (15, 16).

o. The complexity of offense charged with complex defenses available.

p. The lack of adequate record for appeal (6, 29-42).

q. The determination of vital constitutional issues by relying on the aged memory of spectators (26-29, 32-35, 35-39).

r. The failure to inform Respondent of his right to trial by jury (45).

s. The failure to inform Respondent of the consequences of his plea (41).

t. The immediate examination after confession and then hasty arraignment, plea and sentence (78, 4, 5, 6, 16, 17).

u. The failure to furnish information with 43 witnesses (5).

v. The unnatural calmness of Respondent (68, 71, 72).

w. The promise of a lighter sentence in case of a plea ( ).

x. Threats and roughness by police officials (79).

It is prayed that the aforesaid list of facts and factors, which list undoubtedly is not complete, will be considered as an integrated factual background upon which to rest the Court's decision. Naturally no case of this type is on all fours with any other. Mr. Moore reminds us somewhat of Mr. Fikes, somewhat of Mr. DeMeerleer, somewhat of Mr. Gibbs, somewhat of Mr. Uveges; et al.

We contend that the lower courts have refused to decide the matter on the total factual background.

The Circuit Court for the County of Kalamazoo in denying Respondent's motion for a new trial (transcript of record, 81-87), completely ignored the inability of Respondent to obtain a complete record. The testimony of the witnesses some twelve years later was accepted without comment. The court found that a lawyer was mentioned and that the consequences of the plea were told to Respondent. He found that the plea was voluntary. He wrote off completely every word that Respondent said (transcript of record,

p. 83). He considered, specifically, at the most, five of the minimum of twenty-four facts and factors involved.

That court further appears to have limited its decision to the issues raised in the *DeMeerleer* case (transcript of record, p. 84). However, the issues were not so restricted. See the motions filed and amendments thereof (transcript of record, pp. 28-32, 39, 57-58).

In the majority opinion, 344 Michigan 137; 73 N.W. 2d 274 (see p. 95 of transcript of record), the Michigan Supreme Court first discusses at length the fact that Willie B. Moore never denied his guilt and that the record serves to establish that he was guilty.

If it were important, a reading of the record, as for example, pages 41, 46, 78 and 79 would establish that Willie B. Moore denied the crime. However, that question is not at issue here as is conceded by the Supreme Court of the State of Michigan.

Next the majority says it should not ignore the difficulty of "obtaining proof of the commission of the crime after the lapse of 17 years." In *Palmer* v. *Ashe, Warden;* 342 U.S. 134; 72 S.Ct. 191; 96 L.Ed. 154, this Honorable Court permitted a petitioner under habeas corpus to have his day in court though it was some 18 years after petitioner pleaded guilty.

Also considered in the majority opinion is the "possible consequences of returning to society a person likely to increase the public burden of sex crimes" (transcript of record, p. 96). The majority itself thinks there is something mentally wrong with Willie B. Moore. It is our hope that he can be returned to the lower court where he will be protected and society will be, also.

The majority opinion then raises a question: Did that court consider anything other than the *DeMeerleer* case, *supra,* as applied to some of the facts in this case?

The original hearing was based upon a petition of Willie B. Moore which does not appear in the record. In the proceedings of May 16, 1950 (transcript of record, pp. 19-20), the scope of the hearing was limited to the issues of the *DeMeerleer* case (transcript of record, p. 20). However, on May 26, 1950, a new petition was filed expanding the issues to be considered to a full consideration of the constitutional rights involved (transcript of record, pp. 17-18). These issues and the issues of lack of record and improper testimony were raised and expanded in the subsequent hearings (transcript of record, pp. 28-32, 39, 57-58). A mere consideration of issues raised by the case (*DeMeerleer*) would not be a fair basis for determination of this case.

The majority lends much weight to the fact that the defendant had been in trouble four or five times (transcript of record, p. 97). All the offenses were juvenile except the sentence in Grand Rapids for stealing an automobile. The evidence shows that this did not give Willie B. Moore the experience of a Quicksall. In *Gibbs* v. *Burke,* 337 U.S. 773; 69 S.Ct. 1247; a transcript of the petitioner's criminal record showed eight convictions, and nine acquittals, discharges and no true bills. Yet the Court reversed and remanded.

Finally the majority says that this case is not like the *DeMeerleer* case except as to the ages of the Respondents, but that the *Quicksall* case is directly in point (transcript of record, pp. 97-99). The similarities between the *DeMeerleer* case and this case do not end at the youth of the Respondents. Willie B. Moore was faced by a serious and complicated charge. Not a word was said in his defense and once a confession had been forced from him he was

hurried through unfamiliar legal proceedings. At no time was the assertance of counsel mentioned more than casually, and counsel was not offered. Merely because a man is held incommunicado, for the better part of four days before being hurried through the proceedings does not rob the case of the element of quick justice. Yet, in this case, once the intense questioning was over the Respondent was rushed through unfamiliar proceedings without counsel, without the aid of relatives and friends and under the dire threat of the plots against him, and under fear for his life.

As to the *Quicksall* case, Mr. Justice Sharpe in the minority opinion aptly says: "In People v. Quicksall, 322 Mich. 351, Defendant was forty-four years of age and of fairly keen intellect with experience in Court procedure" (transcript of record, p. 94).

The many facts and factors involved must give us pause. Even the Solicitor General finds facts, which trouble him somewhat. See page 20 of the Response of the State of Michigan. It is submitted that these facts and factors which give us pause are sufficient and in fact demand that this cause be reversed and that the case be remanded to the Circuit Court for the County of Kalamazoo for trial.

H. Conclusion

Therefore it is respectfully submitted that Respondent is entitled to a new trial for the following reasons:

1. Because of lack of a complete record Respondent was deprived of his right to adequately appeal his conviction of guilty of first degree murder.

2. The Circuit Court of the County of Kalamazoo and the Supreme Court of the State of Michigan permitted testimony of witness after a twelve year lapse to supplement a defective record.

3. Respondent was sentenced on a plea gained by duress, coercion, fear and promise of leniency.

4. The trial court failed to inform Respondent of his right to counsel and he did not competently and intelligently waive said right.

5. The trial court failed to inform Respondent of his right to have counsel appointed and he did not competently and intelligently waive said right.

6. The trial court failed to inform Respondent of his right to a trial by jury and he did not competently and intelligently waive that right.

7. The trial court failed to inform Respondent of the consequences of his plea of guilty and he did not competently and intelligently plead and did not competently and intelligently waive his right to have the consequences explained.

8. The trial court denied Respondent his Constitutional Right to due process under the Fourteenth Amendment in the Constitution of the United States by denying him the aforesaid rights.

9. The Circuit Court for the County of Kalamazoo, Michigan and the Supreme Court of the State of Michigan erred in denying the Delayed Motion for a new trial for Respondent in view of the factual background of the case in applying the aforesaid denials of Constitutional Rights.

Wherefore it is prayed that this Honorable Court reverse the judgment of the Supreme Court of the State of Michigan affirming the denial by the Circuit Court for the County of Kalamazoo of Respondent's Delayed Motion for New Trial and that this cause be remanded to said Circuit

Court for the Ninth Judicial Circuit of Michigan for trial of the Respondent on the merits.

September 10, 1957

Respectfully submitted,

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